

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

MARIO G. ABADAY

PLAINTIFF

VERSUS

Civil No.: 1:14cv67-HSO-RHW

MICHAEL V. LOMBARDI, et al.

DEFENDANTS

**ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS DEFENDANTS
MICHAEL LOMBARDI AND U.S. OPPORTUNITIES, LLC, DENYING
LOMBARDI'S MOTIONS TO DISMISS AS MOOT, AND DIRECTING
PLAINTIFF TO FILE MOTION FOR DEFAULT JUDGMENT**

BEFORE THE COURT is Plaintiff's Motion [339] to Voluntarily Dismiss Defendants Michael Lombardi ("Lombardi") and U.S. Opportunities, LLC ("USO") as Defendants in this civil action. Under Federal Rule of Civil Procedure 41(a)(2), the district court has discretion to order dismissal of an action without prejudice when the plaintiff so moves. *Culverhouse v. Biehl & Co.*, 24 F.R.D. 198, 199 (S.D. Tex. 1959); *see also Oxford v. Williams Companies, Inc.*, 154 F. Supp. 2d 942, 951 (E.D. Tex. 2001). Rule 41(a)(2) "allows plaintiffs to freely dismiss their suits, subject to court approval, provided the dismissal does not prejudice any party." *Templeton v. Nedlloyd Lines*, 901 F.2d 1273, 1274 (5th Cir. 1990). The Court finds that dismissal would not prejudice Lombardi or USO, the Motion [339] should be granted, and Lombardi and USO should be dismissed as Defendants. Pursuant to Rule 41(a)(2), this dismissal will be without prejudice. F.R.C.P 41(a)(2).

Because he is no longer a Defendant in this civil action, Lombardi's earlier Motion [325] to Dismiss the Summons and Motion [329] to Dismiss the Second Amended Complaint will be denied as moot.

The only remaining Defendant is Royal Hospitality Services, LLC (“RHS”). RHS has not retained counsel or filed any pleadings since its counsel’s Motion [274] to Withdraw on April 29, 2014, though it has been warned of the potential for default should it fail to do so. *See Order Granting RHS’s Attorney’s Motion to Withdraw* [276] (warning RHS of default if counsel is not retained by June 20, 2014). RHS also has failed to respond to Plaintiff’s Amended Complaint [271] filed on March 26, 2014, or Plaintiff’s Second Amended Complaint [321] filed on April 22, 2015.

Therefore, Plaintiff is directed to file a motion for default judgment, on or before January 18, 2016. Plaintiff is to submit accurately cited, individualized proof of damages tailored specifically to Plaintiff’s claims, including an individualized calculation of money damages owed based on record evidence and/or expert affidavit testimony concerning any lost wages and physical or psychological injury. Any Responses or Replies shall be filed in accordance with the deadlines contained in the Local Uniform Civil Rules for the Southern District of Mississippi.

IT IS, THEREFORE, ORDERED AND ADJUDGED, that Plaintiff’s Motion [339] to Dismiss Defendants Michael Lombardi and U.S. Opportunities, LLC is **GRANTED**. Michael Lombardi and U.S. Opportunities, LLC are **DISMISSED WITHOUT PREJUDICE**.

IT IS, FURTHER, ORDERED AND ADJUDGED, that Defendant Michael Lombardi's Motions to Dismiss the Summons [325], and to Dismiss the Second Amended Complaint [329] are **DENIED AS MOOT**.

IT IS, FURTHER, ORDERED AND ADJUDGED, that Plaintiff shall submit a motion for default judgment on or before January 18, 2016.

IT IS, FURTHER, ORDERED that a copy of this Order shall be mailed to Defendants at their last known addresses of record: Royal Hospitality Services, LLC, 237 N. Peters, Suite 4, New Orleans, LA 70130, and U.S. Opportunities, LLC c/o Michael V. Lombardi, 11096 47th Road N., West Palm Beach, FL 33411.

SO ORDERED AND ADJUDGED, this the 18th day of December, 2015.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE